

# EXHIBIT 1

WRITER'S DIRECT DIAL NO.  
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January 9, 2014

**VIA EMAIL**

Jennifer Bennett  
Dentons LLP  
1530 Page Mill Road  
Suite 200  
Palo Alto, CA 94304-1125

Re: *Personalized User Model LLP v. Google Inc.*, C.A. No. 09-00525-LPS

Dear Jennifer:

I write to follow up on the issues discussed during our January 8, 2014 telephonic meet and confer.

Regarding the schedule for pretrial deadlines, we understand that it is PUM's position that Google is a "plaintiff," and therefore PUM should not be required to provide all its portions of the Pretrial Order first. This position is unsupported by the Local Rules and by PUM's own statements in this litigation.

Local Rule 16.3(c)(1) requires inclusion in the pretrial order of "A statement of the nature of the action, the pleadings in which the issues are raised (e.g., third amended complaint and answer) and whether counterclaims, cross-claims, etc., are involved." Local Rule 16.3(10) further requires inclusion of "statements by counterclaimants or cross claimants comparable to that required of plaintiff." This makes clear that a counterclaimant is not a "plaintiff" under this rule.

PUM's Answer to Google's counterclaims on ownership where PUM refers to Google as the "counter-claimant," not a plaintiff, seems to confirm this point.

The distinction between the timing for the pretrial order disclosures for a plaintiff and other parties is further made clear in Rule 16.3(d)(1), which requires that the "plaintiff" provide its

portions of the Pretrial Order at least 30 days before the deadline to file the pretrial order. It makes no mention that counterclaimants provide their portions on this date. Instead, Local Rule 16.3(d)(2) says “[n]o less than 14 days before the pretrial order is to be filed with the Court, all other parties shall provide the plaintiff and each other party with their responses to the plaintiff’s draft order.” I note that during our call, we asked if PUM had authority for its position that Google is a plaintiff under Local Rule 16.3. PUM did not provide any. If PUM believes that there is authority for its position, we again ask that PUM provide it so that we can consider it.

In our call, PUM also suggested that Google was somehow being “difficult” in the negotiation of the pre-trial order schedule. We do not believe that by following the Local Rules here we are being difficult. Rather, we think it is unreasonable, especially given the manner and timing in which PUM has approached this issue, for PUM to expect Google to proceed as PUM proposes. Indeed, for months PUM asserted it is ready to proceed with a trial date in March. PUM should be fully prepared to follow the Local Rules in relation to the trial date it sought and obtained.

In sum, Google expects PUM to follow the Local Rules and provide its portions of the pretrial order, including all that is required by Local Rule 16.3(c),(d)(1), by January 20.<sup>1</sup> If PUM continues to assert that Google is a “plaintiff” in this case such that PUM is not bound to follow this schedule, Google intends to ask the Court to allow Google to present its case first at trial.

Further, Google will reduce the number of prior art references it is asserting by February 5, at the time that Google provides its portions of the Pretrial Order according to the Local Rules. This reduction will include no more than six references for obviousness for any asserted claim, and no more than ten references total for all claims.

We continue to believe, however, that PUM should first commit to whether it will narrow the number of asserted claims and/or accused products and should do that narrowing with its portion of the Pre-trial Order due January 20. During our meet and confer, PUM refused to do so. PUM did say it *may* reduce the number of asserted claims or accused products. PUM, however, could not or would not tell Google whether it will do so, when it would do so, or even when it would decide whether to do so. As we explained on the call, this is prejudicial and unfair to Google. Google will be forced to spend time and resources analyzing claims that PUM is going to ultimately drop from the case in order to determine which prior art references to continue asserting. Further, Google’s decisions regarding which prior art references to continue asserting may depend on the products PUM is accusing since PUM is applying claim limitations inconsistently for purposes of different products and invalidity. If PUM involves on the Court on these issues, we intend to ask the Court to order PUM to first reduce the number of asserted claims and/or accused products.

Finally, we see no issue with Google’s inclusion of the individuals who PUM stated will be its corporate representatives at trial on Google’s Initial Disclosures. Although PUM represented

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<sup>1</sup> We can agree that PUM’s portions of the Pretrial Order be due on January 20.

that these individuals had no relevant knowledge and that it will not call them at trial, PUM later represented to the Court that their attendance at trial was so critical that the trial date needed to be scheduled to accommodate them. There is nothing improper about Google merely adding their names to its Initial Disclosures under the circumstances. We have not identified them as trial witnesses at this time.

Very truly yours,

A handwritten signature in blue ink, appearing to read "David Perlson", with a long horizontal flourish extending to the right.

David A. Perlson

02426.51753/5700646.1

# EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT  
2 IN AND FOR THE DISTRICT OF DELAWARE

3 INTELLECTUAL VENTURES I, LLC, - - -  
4 Plaintiff, : CIVIL ACTION  
5 v. :  
6 CHECK POINT SOFTWARE TECHNOLOGIES LTD., :  
7 CHECK POINT SOFTWARE TECHNOLOGIES INC., :  
8 McAFEE, INC., SYMANTEC CORP., TREND :  
9 MICRO INCORPORATED, and TREND MICRO, :  
INC. (USA), : NO. 10-1067-LPS  
Defendants. - - -

10 Wilmington, Delaware  
11 Wednesday, February 22, 2012  
12 TELEPHONE CONFERENCE

13 BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.  
14

15 APPEARANCES:

16 FARNAN, LLP  
17 BY: BRIAN E. FARNAN, ESQ.

18 and

19 SUSMAN GODFREY L.L.P.  
20 BY: BROOKE A.M. TAYLOR, ESQ.  
(Seattle, Washington)

21 and

22 SUSMAN GODFREY L.L.P.  
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25 Brian P. Gaffigan  
Registered Merit Reporter

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22 Counsel for Check Point Software  
Technologies Ltd. and Check Point  
Software Technologies Inc.

23

24

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12:33:10 1 THE COURT: I'm sorry. Mr. Grimm, go ahead.

12:33:12 2 MR. GRIMM: My co-counsel is Yury Kapgan of

12:33:16 3 Latham & Watkins.

12:33:17 4 THE COURT: Okay. Thank you.

12:33:19 5 MR. GRIMM: I'm filling in today for Jack

12:33:21 6 Blumenfeld is in trial and Karen Jacobs Louden. Jack

12:33:25 7 represents Check Point and his co-counsel is Clem Roberts of

12:33:30 8 Durie Tangri in San Francisco.

12:33:34 9 MR. ROBERTS: Good afternoon, your Honor.

12:33:35 10 MR. GRIMM: Karen Jacobs Louden represents

12:33:37 11 Trend Micro, and her colleague is on the phone today is Yar

12:33:42 12 Chaikovsky. Also with Yar is David Beckwith with McDermott

12:33:49 13 Will & Emery.

12:33:50 14 THE COURT: Thank you.

12:33:51 15 MR. MARSDEN: Good afternoon, your Honor. It's

12:33:52 16 William Marsden from Fish & Richardson. I'm sorry. I

12:33:54 17 dropped off for some reason but I'm for McAfee and I have

12:33:56 18 my colleague Ben Elacqua on as well.

12:34:00 19 THE COURT: Thank you. Is there anybody else?

12:34:05 20 Okay. Thank you.

12:34:07 21 I am here with my court reporter. For the

12:34:09 22 record, it is our case of Intellectual Ventures I LLC versus

12:34:14 23 Check Point Software Technologies Limited met al, our Civil

12:34:18 24 Action No. 10-1067-LPS. Today's call is to address several

12:34:24 25 discovery disputes, and I'd like to go through them one by

1 APPEARANCES: (Continued)

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7 Counsel for Symantec Corp.

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10 - oOo -

11 P R O C E E D I N G S

12 (REPORTER'S NOTE: Telephone conference was held

09:31:56 13 in chambers, beginning at 12:32 p.m.)

12:29:08 14 THE COURT: Good afternoon, everybody. This is

12:32:43 15 Judge Stark. Who is on the call, please?

12:32:45 16 MR. FARNAN: Good afternoon, your Honor. This

12:32:46 17 is Brian Farnan on behalf of Intellectual Ventures. And

12:32:49 18 with me is Brooke Taylor and Ryan Kilpatrick from Susman &

12:32:56 19 Godfrey.

12:32:56 20 THE COURT: Good afternoon.

12:32:57 21 MR. GRIMM: Good afternoon, your Honor. I had

12:33:00 22 to hesitate what time of day it was. This is Tom Grimm,

12:33:02 23 here in Wilmington on behalf of Morris Nichols. I'm here on

12:33:06 24 behalf of Symantec. And on the line with me --

12:33:09 25 A VOICE: Joining the conference.

12:34:28 1 one.

12:34:30 2 We'll start first with the issues raised by the

12:34:34 3 plaintiff. And first there I want to address IV's request

12:34:40 4 for an order directing that defendants limit their prior art

12:34:45 5 references to no more than 20 within 30 days following IV's

12:34:51 6 election of 20 asserted claims. So on that, let's hear

12:34:55 7 first from IV and then we will give defendants a chance to

12:34:59 8 address that issue.

12:35:00 9 So go ahead, plaintiffs.

12:35:02 10 MS. TAYLOR: Thank you, your Honor. This is

12:35:03 11 Brooke Taylor.

12:35:04 12 As you know, the Court ordered IV I to elect 20

12:35:09 13 asserted claims after the defendants argued we needed to

12:35:11 14 streamline the case for trial.

12:35:13 15 Shortly following that order, IV I subsequently

12:35:17 16 proposed to the defendants that they reciprocally limit the

12:35:20 17 number of prior art references they will assert. Though the

12:35:23 18 of defendants offer to consider electing down the road, they

12:35:26 19 refuse to commit to electing 20 prior art references within

12:35:30 20 30 days following IV I's election.

12:35:32 21 By stalling, the defendants want to hide the

12:35:34 22 ball. The defendants have asserted over 300 prior art

12:35:39 23 references, the vast majority of those uncharted. As

12:35:42 24 defense counsel has admitted in meet and confers, they

12:35:45 25 cannot possibly rely on as many references at trial.

1 potentially needing four or five references, well, there are  
2 only four patents in suit. So if you needed five references  
3 per patent, you would be at 20. There is a very large gulf  
4 between 20 and 300, and so we do really believe it's  
5 appropriate and proper to ask the defendants to limit it to  
6 20. They haven't proposed any number that is somewhere  
7 between those.

8 We think 20 is the appropriate number. And if  
9 they, after they make their elections, say they need 22 or  
10 23, they can come to us and I'm confident we won't be back  
11 at the court over a dispute like that.

12 We should have had complete invalidity charts  
13 from the defendants in September, and we are here now before  
14 the Court in late February not only attempting to get a read  
15 on what the invalidity contentions are of the defendants but  
16 to ask them to limit them to a reasonable number. And,

17 I think *Stamps.com* does address the issue of  
18 them working with us and then, if necessary, with the Court  
19 to come back to broaden that limit, if that is appropriate.

20 THE COURT: Okay.

21 MR. ROBERTS: Your Honor, if I could just  
22 correct one thing I said earlier? I apologize. I made an  
23 error.

24 When you are talking about system prior art,  
25 it's 102(e), not 102(b), so the one year limit doesn't apply

1 revision, if need be, so that defendants can be held to  
2 their representation that they are willing to make their  
3 election and to complete their charting of those prior art  
4 references that they're going to rely on and to do so before  
5 May 4th.

6 So that is the Court's ruling with to the first  
7 dispute.

8 Let's turn next to the plaintiff's second  
9 issue, which is their request for an order compelling Trend  
10 Micro to supplement its validity contentions and to provide  
11 noninfringement contentions. We'll hear first from the  
12 plaintiff on that on as well.

13 MS. TAYLOR: Thank you, your Honor. I think  
14 this issue is part and parcel with the issues we just  
15 discussed.

16 As you can see in the samples attached to  
17 Exhibit A and sort of excerpts from the defendants'  
18 invalidity contentions, there are hundreds of exhibits  
19 uncharted and simply listed on which the defendants might  
20 reliably be heard that they are investigating these.

21 What we don't want to have happen here is a  
22 situation of sandbagging. At the outset of the case -- for  
23 a scheduling order, the defendants had asked directly to  
24 permit the defendants to delay invalidity contentions until  
25 after IV I's infringement contentions were served. The

1 and yes, in fact, they can go more than a year. I apologize,  
2 I gave you wrong information.

3 THE COURT: Thank you for that clarification.

4 With respect to plaintiff's request here, I'm  
5 going to grant it in part and deny it in part.

6 Specifically, I am hereby ordering that  
7 defendants reduce their prior art references to no more than  
8 30 and to do so within 21 days of the plaintiff's reduction  
9 of their asserted claims to the 20 as previously ordered by  
10 the Court.

11 I believe that is a fair accommodation and a  
12 proper exercise of discretion given the parties competing  
13 concerns as well as a schedule that has been in place for  
14 some time now and the Court's earlier ruling with respect  
15 to the plaintiff's election of asserted claims.

16 Let me add, if defendants feel, after they see  
17 the plaintiff's 20 asserted claims, they have good cause to  
18 seek an increase from the 30 prior art references, then they  
19 certainly are free to ask that of the Court. Of course,  
20 they need to meet and confer with plaintiff first and see  
21 if you all can agree to raise it somewhat from 30, if that  
22 turns out to be the defendants' belief.

23 In addition to that, I encourage the parties to  
24 figure out if there is a way, given the Court's ruling, to  
25 work together to come up with a schedule or a schedule

1 Court rejected this proposal and required each party to  
2 answer interrogatories as they were served.

3 We served pre-discovery infringement charts in  
4 September of 2011, and as you heard, initially we got back  
5 the defendants' invalidity contentions that were due in  
6 September of that same month, September of 2011, and they  
7 listed they have no charts. There was just a list of  
8 references.

9 We met and conferred and met and conferred  
10 and avoided troubling the Court even though we hadn't we  
11 received any chart, and defendants eventually provided  
12 some chart in October of 2011, yet the current version of  
13 invalidity contentions has 300 references with the vast  
14 majority of them again uncharted.

15 The defendant should provide complete charts for  
16 the references that they list and we would like  
17 supplementation --

18 MR. ELAQUA'S RECORDED VOICE: Ben Elaqua for  
19 McAfee ...

20 A VOICE: ... has left the conference.

21 THE COURT: Sorry, Ms. Taylor. Go ahead.

22 MS. TAYLOR: Thank you, your Honor.

23 We would like supplementation within 14 days  
24 for any reference on which defendants will rely. We again,  
25 the election issue was prominent, were required to elect our



# EXHIBIT 3

1 IN THE UNITED STATES DISTRICT COURT  
2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -  
4 CLOUDING IP, LLC, : CIVIL ACTION  
: NO. 12-639-LPS  
5 Plaintiff, : and  
v : NO. 12-641-LPS  
: NO. 12-675-LPS  
6 GOOGLE INC., : NO. 12-1078-LPS  
: NO. 13-1338-LPS  
7 Defendant. : NO. 13-1341-LPS  
: NO. 13-1342-LPS  
8 ----- : NO. 13-1453-LPS  
: NO. 13-1454-LPS  
9 (and other captions whose case : NO. 13-1455-LPS  
numbers are listed to the right) : NO. 13-1456-LPS  
10 : NO. 13-1457-LPS  
: NO. 13-1458-LPS

11 - - -  
12  
13 Wilmington, Delaware  
14 Friday, December 20, 2013  
*Scheduling Telephone Conference*

15 - - -  
16 BEFORE: HONORABLE **LEONARD P. STARK**, U.S.D.C.J.

17 APPEARANCES: - - -  
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20 and  
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24 Brian P. Gaffigan  
25 Registered Merit Reporter

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9 Hosting, Inc., and Dropbox Inc.

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1 APPEARANCES: (Continued)

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8 CA Technologies

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12 and

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16 Communications GmbH & Co KG and  
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1 APPEARANCES: (Continued)

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1 APPEARANCES: (Continued)

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7 Counsel on behalf of EMC Corporation,  
8 EMC International U.S. Holdings, Inc.  
9 and VMware, Inc.

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12 P R O C E E D I N G S

13 (REPORTER'S NOTE: The following telephonic  
14 scheduling conference was held in chambers, beginning at  
15 10:03 a.m.)

16 THE COURT: Good morning, everybody. This is  
17 Judge Stark. Who is there, please?

18 MR. BRAUERMAN: Good morning, Your Honor. This  
19 is Steve Brauerman from Bayard on behalf of plaintiff  
20 Clouding IP, LLC. I'm joined on the line by my co-counsel,  
21 Brian Ledahl and Dorian Berger from Russ, August & Kabat in  
22 Los Angeles.

23 THE COURT: Okay. Thank you.

24 MS. MAGUIRE: Good morning, Your Honor. For  
25 defendants Amazon, Rackspace and Dropbox, this is Lauren

1 if the Court imposes, for example, the prior art limitations  
 2 that the plaintiff has asked for, it limits their prior art  
 3 designations. It limits their right in depositions. Those  
 4 are the problems that will arise if the two companies are  
 5 treated as a single entity for purposes of the scheduling  
 6 order.

7 I understand the Court isn't deciding the joinder  
 8 issue at this point, but I wanted the Court to understand that  
 9 that was the reason for our request.

10 THE COURT: Okay. Thank you. Is there any  
 11 other defendant?

12 Okay. Thank you. Mr. Ledahl, is there anything  
 13 briefly you want to say briefly in reply?

14 MR. LEDAHL: Yes, Your Honor. I think just a  
 15 couple of quick issues.

16 First. Mr. Blumenfeld, in talking about some of  
 17 the limitations, made a number of references to 14 patents.  
 18 I just want to be clear that there is no case in which 14  
 19 patents are asserted against a single defendant. In fact,  
 20 by my count, the case with the highest number of patents  
 21 asserted against a single defendant is actually the Amazon  
 22 case that was in the first wave where the Court set the  
 23 limits that are consistent with what Clouding is proposing.

24 I don't think that the change in the number of  
 25 defendants or anything like that warrants the changes that

1 this is not a situation where the defendants are without the  
 2 ability to know what is going on in the case. July is some  
 3 months from now, and during that time defendants will get  
 4 contentions both under 4(a), very soon, and under 4(c), well  
 5 before that deadline. I think this is consistent with the  
 6 spirit, if not the precise timing certainly but the spirit  
 7 and the concept of the model order proposed by the Federal  
 8 Circuit Advisory Committee.

9 Obviously, this is something where we think  
 10 these limits impact both parties, practically speaking.  
 11 Plaintiff is going to have to limit claims at an early stage  
 12 before having perfect knowledge. And that's a consequence  
 13 of the need to streamline things.

14 We think that those same kinds of practical  
 15 considerations warrant a limit on prior art and that it's  
 16 not unreasonable to ask defendants to do that, and that  
 17 we're not suggesting an unreasonably early time for that.

18 THE COURT: All right. Thank you very much.

19 Well, let me give you a resolution to the issues  
 20 that are in dispute and preface it by saying I am hereby  
 21 directing that the plaintiff, on behalf of all parties,  
 22 submit a revised proposed scheduling order that will embody  
 23 the rulings that I give you, and I'll get your views at the  
 24 end as to when you want to submit that in light of the fact  
 25 that the holidays are imminently upon all of us.

1 defendants are proposing in terms of additional limits, for  
 2 example, on Clouding or suggest that there needs to be some  
 3 expansion because, frankly, like I said, the most sort of  
 4 number of patents are in a case where the Court has already  
 5 evaluated these issues.

6 As to the issue that Mr. Blumenfeld discussed  
 7 about limits on prior art and the suggestion that it was  
 8 too early. I think it's important to clarify that by both  
 9 parties' scheduling proposals on this, the timing we're  
 10 talking about here is going to have infringement contentions  
 11 provided under Rule 4(c) by mid-May, so this is two months  
 12 after that effectively. It's not some unreasonably early  
 13 time in the case.

14 Mr. Blumenfeld also mentioned something about  
 15 priority dates. My recollection is that priority dates  
 16 and things about that were the subject of interrogatories  
 17 that were common interrogatories proposed in the first wave  
 18 of cases that were already answered and, moreover, to the  
 19 extent that there is any new patent, for example, in the  
 20 parties' joint proposal, we have addressed that by the end  
 21 of January, plaintiff will supplement its responses to those  
 22 interrogatories to address the possible supplementation of  
 23 those interrogatories to the extent there are, for example,  
 24 additional patents.

25 My expectation is that on something like that,

1 Let me go through the issues in the order that I  
 2 think plaintiff initially raised them.

3 First, and this is where I guess Mr. Ledahl ended  
 4 as well, the proposed limitations on prior art references that  
 5 can be asserted and relied upon by defendants.

6 Certainly -- and I don't think this is even  
 7 contested -- at some point the defendants will need to be  
 8 limited in terms of the number of prior art references that  
 9 they can assert. But the question is at what point?

10 I think that the proposals from the plaintiff  
 11 are both too early and too drastic in terms of numbers, and  
 12 so I'm not adopting either of the timing proposals from the  
 13 plaintiff. I'm essentially adopting what the defendants  
 14 have proposed but with a slight, I suppose, caveat.

15 So to be precise, in the course of the paragraph  
 16 4 exchanges of contention, there will be no obligation on  
 17 the defendants to reduce the number of prior art references.

18 When it comes to the time frame after Markman, and  
 19 so that is, let's say, 75 days after receiving the Court's  
 20 claim construction, at that point, on that 75th day, I want  
 21 the language to read something to the effect that the parties  
 22 will submit their proposal or proposals for the defendants to  
 23 reduce the number of prior art references, meaning that when  
 24 this case gets to the point where I have already construed the  
 25 claims, I will then focus on, as you all will have focused on

1 in anticipation of the filing, I will focus on how big is  
2 this case at that point, how many patents are in suit, how  
3 many defendants are here, how many accused products are there.

4 At that point, you will all be able to give me  
5 very concrete proposals for the timing and the number of  
6 prior art references that the case should be reduced to, and  
7 I'll make an informed decision at that point.

8 To do it sooner than that, to do it on the schedule  
9 that the plaintiff proposes, I think is not warranted. There  
10 are reasons that include the size of this case that I think  
11 make that unwarranted in these circumstances, and there is so  
12 much uncertainty, particularly for the newer added defendants.

13 I'm not even sure at a academic level, I suppose,  
14 that the analogy that the plaintiff would draw between the num-  
15 ber of asserted claims and the number of prior art references  
16 is even a very accurate analogy. But I need not unpack  
17 entirely that academic issue to simply resolve the concrete  
18 dispute in front of me today. On that dispute, essentially,  
19 as I say, I'm going with the defendants, but I do want, on  
20 that 75th day after the Markman, I want your specific  
21 proposals as to when and by how much prior art references  
22 will be reduced.

23 I expect certainly that after that time, there  
24 will be further narrowing, as there always is, and ultimately  
25 this case will end with a trial or trials in which the parties

1 or limiting the number of disputes that the Court will  
2 resolve, but I just don't think that the relief sought here  
3 to limit the overall number of claims asserted across these  
4 13 or so cases, I don't think that is warranted here.

5 On the third I guess set of issues related to  
6 depositions, on almost all of this, I'm in agreement with  
7 the plaintiff here. So specifically in terms of the number  
8 of hours per defendant group that the plaintiff can use, I'm  
9 going to adhere to the 70 that I adopted in the first case.  
10 I continue to think that is a reasonable number. Obviously,  
11 it doesn't mean that the plaintiff necessarily has to use  
12 all of that. Always, all sides have to behave reasonably  
13 and not abusively with the number of hours they have.

14 In terms of limiting depositions to just 10, I  
15 don't think that that is a necessary limitation either. I  
16 think the hours are an adequate limitation; and if the  
17 plaintiff has a good faith basis to take a lot of very short  
18 depositions, sometimes that may be what is warranted by the  
19 circumstances. Again, it's all limited by the reasonable  
20 and non-abusive principles. If plaintiff is being abusive  
21 regardless of the number of hours that I give it, I trust  
22 the defendants will let the plaintiff know and ultimately  
23 let me know if they need to do so.

24 With respect to the inventor depositions, I  
25 think 14 hours is the proper default, particularly in a case

1 will be given a certain number of hours to make their  
2 presentation, and that will necessarily cause limitations to  
3 be adopted as well.

4 That's that first issue regarding prior art  
5 references.

6 The second issue is whether there should be a  
7 limitation on the number of asserted claims across all of  
8 the cases. Here, I'm with the plaintiff.

9 I'm hearing the concern which is primarily on  
10 behalf of the defendants a concern that Markman may get too  
11 out of control if the plaintiff could have something like 40  
12 asserted claims and make them a different 40 against each  
13 defense group.

14 First of all, I think that is very unlikely to  
15 occur. But there are steps in the Markman process itself  
16 for flagging anything that is out of control or unreasonable,  
17 including the whole joint claim construction chart process.

18 If either side thinks that Markman is going to  
19 be more unmanageable than what we all anticipate, in light  
20 of setting aside a couple of days and how big this case is,  
21 if anybody thinks it's getting too unreasonable as you are  
22 going through the process of preparing for that, then  
23 obviously first talk to one another, see if you can agree on  
24 reasonable limits. And if you can't, then you will have to  
25 come back to me and we will consider things such as reducing

1 like this. I'm not going to, at this early stage of the  
2 case, require that any inventor be deposed for 21 hours.  
3 If, and when, the defendants identify five, or whatever  
4 number it turns out to be, inventors that you think 14 hours  
5 is inadequate for, talk to the plaintiff about that. If you  
6 can't work it out, then we'll have a discovery dispute to  
7 resolve.

8 The only other I think deposition-related issue  
9 -- and this is one that I'm not going to go with the plaintiff.  
10 To the extent the plaintiff is requiring that those two  
11 days of deposition time with each inventor necessarily be  
12 consecutive, that is, two consecutive days, I'm not going to  
13 lock that in at this time. So, again, be reasonable in  
14 trying to accommodate everyone's schedule but I'm not going  
15 to order that be done in all instances with inventors.

16 Then I think, finally, the only remaining  
17 issue is the issue regarding whether EMC and VMware will  
18 be considered separate defendant groups. On this, I'm in  
19 agreement with the plaintiff. I'm not going to treat EMC  
20 and VMware as separate defense groups for purposes of  
21 discovery and scheduling, which is the only issue in front  
22 of me now.

23 As I indicated in the questioning, I don't have  
24 a severance or joinder dispute in front of me right now,  
25 so I'm certainly not deciding such a dispute. I'm only

# EXHIBIT 4

**Proposed Pre-trial Order Schedule in PUM/Google 09-525-LPS**

Date	Event
Fri Jan. 10	Deadline for Google to provide notice of its anticipatory references and not more than 10 obviousness combinations on which it will rely
Mon Jan. 20	PUM serves shell PTO, with uncontested facts (III.A) and trial procedures
Tues Jan. 21	Parties serve <i>Daubert</i> motions
Wed Jan. 22	Parties serve contested facts (III.B) and issues of law (IV) on issues for which they bear the burden of proof
Mon Jan. 27	Parties serve fact and expert witness lists on issues for which they bear the burden of proof (V.A-C); Google provides comments on pretrial order shell, uncontested facts (III.A), and trial procedures
Wed Jan. 29	Parties serve deposition designations (V.D), and opening motions in limine (IX).
Fri Jan. 31	PUM provides proposed jury instructions and verdict form; Parties serve trial exhibit lists with electronic copies of exhibits (VI.A), rebuttal on contested facts (III.B) and issues of law (IV)
Fri Feb. 7	Parties serve oppositions to <i>Daubert</i> motions and objections to deposition designations and counter-designations (V.D)
Mon Feb. 10	Parties exchange lists of additional matters (XV) and serve motion in limine oppositions
Wed Feb. 12	Google provides response to proposed jury instructions and verdict form
Fri Feb. 14	Parties serve objections to deposition counter-designations (V.D), replies to <i>Daubert</i> motions
Tues. Feb. 18	Parties serve objections to trial exhibits (VI.A), and motion in limine replies (IX)
Wed Feb. 19	Final PTO due

Fri Feb. 21	Deadline to file voir dire questions, proposed jury instructions, and verdict sheet
Wed Feb. 26	Pretrial conference (2 pm ET)